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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1079

GROVER G. ALEXANDER, *Petitioner*

v.

CHARLES SHARPE, *Respondent*

STATE OF MAINE, *Respondent*

v.

GROVER G. ALEXANDER, *Petitioner*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

PETITION FOR REHEARING

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March 4, 1970

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PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an order: (1) vacating its denial of the Petition for Writ of Certiorari, entered on February 24, 1970, and (2) granting the Petition. As grounds for this motion Petitioner states the following:

1. THE SEVEN QUESTIONS PRESENTED IN THE INSTANT CASE ARE PARTICULARLY TIMELY.

It is submitted, that the issues in the instant case are identical to those that will undoubtedly be presented to this Court in connection with recent contempt of court convictions of attorneys in various State and United States District Courts, as well as the recent trial referred to by the news media as the trial of "Chicago Seven." Petitioner hastens to point out that by reference to the "Chicago Seven" incident and other contemporary contempt citations he does not suggest that his conduct was comparable in degree to that of the alleged contemnors. Petitioner contends simply that the legal and constitutional principles are identical with respect to the rights of the accused.

Petitioner urges to this Court that the entire area of law relating to the disqualification of a presiding trial judge in instances involving a personal criticism of or personal involvement of the presiding judge urgently needs clarification and redefinition. The doctrine and rationale established by *Cooke v. United States*, 267 U.S., 517 at 539 and *U.S. v. Bradt*, 294 Fed. 2nd, 879 and *Sacher v. United States*, 343 U.S.1 at page 8 and *Offut v. United States*, 348 U.S. 11 at page 14 does not clearly define the respective rights of the presiding judge and counsel under the circumstances present in the instant case. Moreover, it is felt that the issue of Trial by Jury in cases involving the disqualification of the presiding justice is not clearly determined under the doctrine of *Duncan v. Louisiana*, 88 S.Ct. 1444; *Bloom v. Illinois*, 88 S.Ct. 1477 and *Cheff v. Schnackenberg*, 86 S.Ct. 1523.

In this connection, Petitioner is asking this Honorable Court to determine the proper procedure in instances wherein the Trial Judge is, in fact, *disqualified*. That is, a choice between a proceeding similar to that contemplated by Rule 42(b), or, Trial by Jury. In the former, the reference to another Justice for determination is further clouded by the "petty offense" rule announced in CHEFF. It is

possible, and in many instances probable, that, after hearing or trial, the Justice to whom a case is referred shall feel a penalty greater than six (6) months is necessary and that he is thereby precluded from finally determining the matter. The matter then becomes subject to Trial by Jury under CHEFF. This technique seems circuitous and perhaps cumbersome, if not unconstitutional, in and of itself. This analysis is particularly true in instances wherein the permissible punishment is open-ended as in Petitioner's case. In other instances wherein the prescribed maximum punishment falls within the CHEFF rule, no problem is presented. The latter right of Trial by Jury is the only all-inclusive rule in instances wherein the offended Justice is disqualified. Moreover, the exact point at which an offense ceases to be "petty" in State Courts has not been settled.

The frequent incidence of criminal contempt proceedings against trial counsel at the present time seems to add a great degree of public urgency and public importance to the problem as well as the major importance to the Bench and Bar on a national level. In the instant case Petitioner wishes to reemphasize the claim of *prejudice* and *disqualification* of the Trial Judge as set forth in the Petition and amendments thereto. Such circumstances seem to place the instant case clearly in focus with respect to the national consequences of similar criminal contempt proceedings. Again, this Court's attention is respectfully directed to the fact that the Brief in Opposition filed by the State of Maine did not explicitly deny in a single instance the course of conduct attributed to the Trial Judge as set forth in the Petition.

2. THE INCARCERATION OF A PROMINENT TRIAL ATTORNEY, WITHOUT TRIAL WHERE THE TRIAL JUDGE WAS BOTH ACCUSER AND FACT FINDER, REFLECTS ADVERSELY ON THE ENTIRE JUDICIAL SYSTEM.

In the instant case if the entire Petition is reduced to its simplest terms, it is submitted, that it reflects that an experienced and aggressive trial attorney who, during an ex-

change between the Court and Petitioner relating to what Petitioner felt to be one in a series of improper and arbitrary rulings by the Court, the Trial Judge stood up, shouted at the Petitioner, called him incompetent and otherwise humiliated Petitioner in the presence of the Jury. The Petitioner replied, "I think it demonstrates your prejudice without doubt." This Court will recall that the incident occurred at 4:55 p.m. on the second day of a personal injury trial wherein the Trial Judge had repeatedly by looks, unwarranted comments and interference and vocal intonations demonstrated his hostility toward Petitioner.

In this connection, Petitioner is asking this Honorable Court to establish and define the rights of litigants and counsel in instances of this type wherein the Trial Judge, without justification, is felt to be prejudicial and arbitrary; and that such error cannot be corrected through the usual appellate process. In short, the appellate process does not always afford litigants in all instances a complete remedy under the present circumstances involving serious error beyond that of a breach of the rules of evidence and orderly trial procedure. The doctrine set forth in *Sacher v. United States*, 343 U.S.1, 72 S.Ct. 451 at page 343, is unclear in this respect. In the Petitioner's case the erroneous and arbitrary rulings were accompanied by the hostility and attitude of the Court toward the Petitioner as established by the record. The element of improper conduct on the part of the Court was absent in the *Sacher* case. Maine, as well as many other jurisdictions, does not provide for the procedural safeguards of an Affidavit of Prejudice on the part of the Trial Judge as is contained in the Federal Rules. If proper within the scope of the Petition, Petitioner wishes to raise the question of "freedom of speech" within the provisions of the First Amendment, United States Constitution.

The Trial Judge's unwarranted attitude toward Petitioner began on voir dire examination of a Prospective Juror and continued throughout the trial. Petitioner feels that this

claim is adequately supported in the record, all as set forth in the Petition and amendments thereto. No Certificate of Contempt was filed in the matter for a period of 13 months and 22 days; and at no point was Petitioner permitted to challenge the Certificate. Moreover, the Maine Supreme Judicial Court refused to examine the Certificate to determine guilt or innocence, notwithstanding the fact that Petitioner explicitly denies the conduct charged except the statement of "prejudice." Petitioner was prepared to present numerous witnesses who were present to refute the alleged conduct.

Petitioner is not an habitually errant lawyer given to contemptuous conduct and/or questionable professional ethics. On the contrary, he is a successful negligence trial-lawyer who has practiced law for a period of 15 years, served 10 years as a Police Court Judge under an appointment by the then Governor of Maine, United States Senator Edmund S. Muskie, has been a member of the Bar of the United States Supreme Court since 1961 as well as a member of several other Local, State and National Bar Associations. The procedure outlined in the preceding paragraph seems to violate Petitioner's right of Due Process and is of great public and judicial concern on a national level.

3. THE ISSUES OF PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND SELF-INCRIMINATION SEEM EQUALLY IMPORTANT TO THE BENCH AND BAR.

Petitioner is asking this Honorable Court to define the rights of counsel and litigants when confronted with criminal contempt proceedings. Particularly, should a contemnor persist in his accusation of prejudice against a Trial Judge in order to preserve the appellate record? Or, should a contemnor be contrite and repentant and run the risk of admissions, self-incrimination and the appearance of guilt, and yet pursue his appellate rights if he, in fact, believes himself to be innocent and his constitutional rights violated? The preservation of the unique relationship between Bench and Bar seems to demand a strict adherence to Due Process requirements as well.

4. ONE OF THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT CONSIDERED THAT THE PETITION SHOULD HAVE BEEN GRANTED.

CONCLUSION

For the reasons set forth above, as well as those contained in the Petition for Writ of Certiorari, Petitioner prays that this Court grant rehearing of the Order of Denial, vacate that order, grant the Petition and review the judgment and opinion below.

Respectfully submitted,

William A. Mann
308 Colorado Building
Washington, D.C. 20005
Counsel for Petitioner

March 2, 1970

CERTIFICATE OF COUNSEL

As counsel for the Petitioner, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specifically in Rule 58(2).

William A. Mann
308 Colorado Building
Washington, D.C. 20005
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 1970 copies of the Petition for Rehearing were mailed, postage prepaid, to: John B. Benoit, Assistant Attorney General, State House, Augusta, Maine, Counsel for Respondent. I further certify that all parties required to be served have been served.

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